In the Supreme Court of the United States.

OCTOBER TERM, 1913.

THE UNITED STATES
v.
THE MIDWEST OIL COMPANY, ET AL. } No. 750.

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

MOTION BY THE UNITED STATES TO ADVANCE AND FOR CERTIFICATION OF THE WHOLE RECORD.

The Solicitor General on behalf of the United States respectfully moves that this cause be advanced for early hearing because of its great public importance, and also prays that the court require the whole record and cause to be sent up for its consideration and final determination pursuant to section 239 of the Judicial Code.

THE QUESTION INVOLVED.

The case turns upon the question whether the President, prior to the approval of the Act of June 25, 1910 (36 Stat., 847), which *expressly* gave him the power, was impliedly authorized to reserve designated portions of the public domain chiefly valuable for petroleum against subsequent occupation and location under the general mining act of February 11, 1897 (29 Stat., 526).

BRIEF STATEMENT OF THE RECORD.

On September 27, 1909, pursuant to the direction of the President, an order was promulgated by the Interior Department, for the purpose of reserving certain unoccupied and unclaimed public petroleum lands in Wyoming and California, viz:

> In aid of proposed legislation affecting the use and disposition of the petroleum deposits on the public domain, all public lands in the accompanying lists are hereby temporarily withdrawn from all forms of location, settlement, selection, filing, entry, or disposal under the mineral or nonmineral public land laws. All locations or claims existing and valid on this date may proceed to entry in the usual manner after field investigation and examination. [Here follow the descriptions of lands in Wyoming and California.]

This suit was brought for the purpose of restraining trespasses by the defendants upon a tract of land in Wyoming which was included in the above order of withdrawal. The bill alleges the making of the order and, by apt reference to an attached copy of it, sets forth its text as a part of the pleading. It alleges that in virtue of the order the land in controversy was withdrawn from occupation, location, and acquisition under the mining laws and remains in the ownership of the United States. It does not allege the purposes for which the order was made except as they appear by the quotation of the order itself.

The bill shows that *after* the order of withdrawal was made, but before June 25, 1910, the predecessors

in interest of the defendants entered upon the land in controversy, discovered oil, and undertook to locate it as an oil placer mining claim under the Act of February 11, 1897, *supra*.

The District Court sustained a motion to dismiss the bill upon the ground that the President was without authority to reserve the land against subsequent occupation and location under that law. Upon appeal the Circuit Court of Appeals has certified to this court the following questions, viz:

1. Prior to the Act of June 25, 1910 (36 Stat. L., 847, 848), did the President (or the Secretary of the Interior) have the lawful power, "in aid of proposed legislation affecting the use and disposition of the petroleum deposits on the public domain," to withdraw public lands containing petroleum and chiefly valuable therefor from all forms of location, selection, filing, entry, or disposal under the public mineral land laws?

2. Did Petroleum Withdrawal No. 5, of date September 27, 1909, have the effect of preventing the lawful location or acquisition of lands (described in said Withdrawal Order No. 5), which contained petroleum or other mineral oils, and were chiefly valuable therefor, by persons authorized to enter lands under the mining laws of the United States, under the provisions of the act of Congress entitled "An Act to authorize the entry and patenting of lands containing petroleum and other mineral oils under the placer mining laws of the United States," approved February 11, 1897 (29 Stat. L., 526)?

3. Must the efficacy of the order of September 27, 1909, to reserve the land in controversy from the subsequent initiation and acquisition of rights under the Act of February 11, 1897, *supra*, be held to depend upon the nature of the purpose or purposes for which it was made?

4. If question No. 3 be answered in the affirmative, then was it essential to the validity of the reservation or withdrawal that the purpose or purposes be expressed in the order itself?

5. If there were specific purposes actuating the order of September 27, 1909, sufficient in law to sustain it and consistent with but not appearing in its language, was it incumbent on the plaintiff to allege such specific purposes in its bill in order to have the advantage of them as against the defendants' motion to dismiss?

6. Assuming that the general purposes expressed in the order of September 27, 1909 do not suffice alone to determine its validity or invalidity, and that there might have been another consistent purpose sufficient to sustain it, should the order be presumed to be valid in the absence of any allegation or proof that such other purpose did not exist?

REASONS FOR ADVANCING THE CAUSE.

The order of September 27, 1909, and a number of others like it made before the approval of the Act of June 25, 1910, operated, if valid, to reserve all the public lands in described townships and sections aggregating 4,546,988 acres. (Report of Secretary of the Interior for the fiscal year 1910, p. 93). The

lands withdrawn lie in Wyoming, California, and six other States. A considerable part of the California land is subject to the claims of the Southern Pacific Railroad Co. under patents containing reservations of mineral land to the United States, like the patent involved in the case of *Burke* v. *Southern Pacific*, No. 279, October Term, 1913, which is now under consideration by this court after argument and submission. Other parts of the lands were already subject to unquestionable private titles and claims before the orders were made and hence were not affected thereby. But, after deducting such last-mentioned areas, there remain not only the lands subject to the Southern Pacific claim, but also an immense area of lands which at the dates of these orders were unoccupied and unclaimed public lands of the United States. Of these last a large percentage have been occupied and claimed by individuals and corporations as oil placer mining claims since the withdrawals were made but before the approval of the Act of June 25, 1910, and before the President was afforded opportunity to act again under the express sanction of that statute. In the State of California the lands subject to such claims, as well as certain of the lands affected by the Southern Pacific claim, have become the theater of extensive drilling and pumping operations whereby vast quantities of oil have been extracted and sold and are being extracted and sold from day to day. The value of the subject matter thus brought in dispute between the Government and private claimants is believed to mount

into hundreds of millions of dollars. Several suits have been begun by the Government and many more are in immediate contemplation, in California, for the purpose of enjoining these operations and to obtain accountings for the oil extracted. The situation is strikingly important and urgent and its proper solution depends in a very large degree upon a speedy decision of the questions presented by this case.

REASONS FOR CALLING UP THE WHOLE RECORD AND CAUSE.

The motion in this regard is made with a view to insuring a speedy and final determination, by this court, of the crucial question of the President's authority to make the withdrawals above described. To this end, it is submitted, the court should have before it the entire cause, with full liberty to consider every question, whether patent or latent, primary or subsidiary, existing in the record, unhampered by the peculiar restrictions which affect the jurisdiction when a cause is determined upon questions certified merely.

To illustrate: It may possibly be contended that the first two questions certified are too broad in that they can not be answered without first determining, more clearly than the order of withdrawal itself reveals them, what the specific purposes of the withdrawal were. It is the contention of the Government, made in both courts below, that these purposes are readily and properly ascertained by resort to the judicial knowledge of the court assisted by messages of the President, reports of proceedings before the

committees of Congress, and other public documents. If the court should be of the opinion that this contention raises a distinct point or points not proper to be disposed of in dealing with questions 1 and 2, the task of answering those questions might, conjecturally, become an impossible one, if the validity of the withdrawal were held to depend upon the nature of the purposes for which it was made. If answers to questions 1 and 2 were declined, answers to the remaining questions would but serve to clear the way somewhat for a decision of the ultimate and crucial question by the Circuit Court of Appeals, and a subsequent return to this court by way of appeal would undoubtedly follow, after much regrettable delay, attended by injury to both public and private interests.

Again, the questions certified do not call upon this court to determine the bearing of the Act of June 25, 1910, *supra*, upon withdrawals made before its approval.

We are authorized to state that counsel for the appellees concur in the desire that the entire cause be brought up for final determination in this court and that it be advanced for early hearing.

Respectfully submitted.

JOHN W. DAVIS,
Solicitor General.

ERNEST KNAEBEL,
Assistant Attorney General.

NOVEMBER, 1913.

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